

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LEE E. HAGGERTY,

Plaintiff,

v.

JEFF LYNCH, et al.,

Defendants.

No. 2:21-cv-1248 AC P

ORDER

Plaintiff, a state prisoner proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

I. Application to Proceed In Forma Pauperis

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). ECF Nos. 2, 5. Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time

1 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C.
2 § 1915(b)(2).

3 II. Statutory Screening of Prisoner Complaints

4 The court is required to screen complaints brought by prisoners seeking relief against "a
5 governmental entity or officer or employee of a governmental entity." 28 U.S.C. § 1915A(a).
6 The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are
7 "frivolous, malicious, or fail[] to state a claim upon which relief may be granted," or that "seek[]
8 monetary relief from a defendant who is immune from such relief." 28 U.S.C. § 1915A(b).

9 A claim "is [legally] frivolous where it lacks an arguable basis either in law or in fact."
10 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
11 Cir. 1984). "[A] judge may dismiss . . . claims which are 'based on indisputably meritless legal
12 theories' or whose 'factual contentions are clearly baseless.'" Jackson v. Arizona, 885 F.2d 639,
13 640 (9th Cir. 1989) (quoting Neitzke, 490 U.S. at 327), superseded by statute on other grounds as
14 stated in Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000). The critical inquiry is whether a
15 constitutional claim, however inartfully pleaded, has an arguable legal and factual basis.
16 Franklin, 745 F.2d at 1227-28 (citations omitted).

17 "Federal Rule of Civil Procedure 8(a)(2) requires only 'a short and plain statement of the
18 claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of
19 what the . . . claim is and the grounds upon which it rests.'" Bell Atl. Corp. v. Twombly, 550
20 U.S. 544, 555 (2007) (alteration in original) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).
21 "Failure to state a claim under § 1915A incorporates the familiar standard applied in the context
22 of failure to state a claim under Federal Rule of Civil Procedure 12(b)(6)." Wilhelm v. Rotman,
23 680 F.3d 1113, 1121 (9th Cir. 2012) (citations omitted). In order to survive dismissal for failure
24 to state a claim, a complaint must contain more than "a formulaic recitation of the elements of a
25 cause of action;" it must contain factual allegations sufficient "to raise a right to relief above the
26 speculative level." Twombly, 550 U.S. at 555 (citations omitted). "[T]he pleading must contain
27 something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally
28 cognizable right of action." Id. (alteration in original) (quoting 5 Charles Alan Wright & Arthur

1 R. Miller, Federal Practice and Procedure § 1216 (3d ed. 2004)).

2 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to
3 relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting
4 Twombly, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual
5 content that allows the court to draw the reasonable inference that the defendant is liable for the
6 misconduct alleged.” Id. (citing Twombly, 550 U.S. at 556). In reviewing a complaint under this
7 standard, the court must accept as true the allegations of the complaint in question, Hosp. Bldg.
8 Co. v. Trs. of the Rex Hosp., 425 U.S. 738, 740 (1976) (citation omitted), as well as construe the
9 pleading in the light most favorable to the plaintiff and resolve all doubts in the plaintiff’s favor,
10 Jenkins v. McKeithen, 395 U.S. 411, 421 (1969) (citations omitted).

11 III. Complaint

12 The complaint alleges that defendants Lynch, Collinsworth, Uribe, Black, Liddell, Arthur,
13 and Sullivan violated plaintiff’s rights under the Eighth Amendment when they failed to protect
14 him. ECF No. 1. Specifically, plaintiff alleges that on November 13, 2019, after being escorted
15 to the group room by Uribe, he was ordered to “get down.” Id. at 3. Collinsworth, Sullivan,
16 Liddell, Black, and Arthur were also in the room and Arthur placed plaintiff in restraints. Id. As
17 plaintiff was attempting to leave the room, he felt a sharp pain in his lower back, which was later
18 found to have been caused by two puncture wounds. Id. Because the injury was to plaintiff’s
19 back as he was exiting the room, he does not know who caused his injury. Id. He alleges that
20 Collinsworth, Uribe, Black, Liddell, Arthur, and Sullivan all knew that plaintiff was at substantial
21 risk of harm when exiting the room in restraints and failed to protect him, while Lynch signed off
22 on plaintiff’s partially granted grievance and failed to ensure defendants were properly trained.
23 Id. at 4.

24 IV. Failure to State a Claim

25 “[A] prison official violates the Eighth Amendment only when two requirements are met.
26 First, the deprivation alleged must be, objectively, sufficiently serious; a prison official’s act or
27 omission must result in the denial of the minimal civilized measure of life’s necessities.” Farmer
28 v. Brennan, 511 U.S. 825, 834 (1994) (internal quotation marks and citations omitted). Second,

1 the prison official must subjectively have a sufficiently culpable state of mind, “one of deliberate
2 indifference to inmate health or safety.” Id. (internal quotation marks and citations omitted).

3 The complaint implies, but does not specify, that plaintiff was assaulted by an unknown
4 individual as he was exiting the room, while the attached grievance indicates that he was
5 assaulted by another inmate while lying on the ground. ECF No. 1 at 3, 10. In either event, there
6 are insufficient facts to show that defendants Collinsworth, Uribe, Black, Liddell, Arthur, and
7 Sullivan were aware that plaintiff was at risk of being assaulted and failed to take steps to prevent
8 the assault.

9 With respect to defendant Lynch, plaintiff alleges only that Lynch signed off on his
10 grievance. This allegation does not state a claim for relief, because an individual defendant is not
11 liable under § 1983 unless the facts establish the defendant’s personal involvement in the
12 constitutional deprivation or a causal connection between the defendant’s acts and the
13 constitutional deprivation. Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989). The fact that
14 Lynch signed off on the grievance after the assault occurred does not demonstrate that Lynch was
15 aware of the threat to plaintiff’s safety at a time when he would have been able to intervene. See
16 George v. Smith, 507 F.3d 605, 609-10 (7th Cir. 2007) (no liability for individual who rejects
17 grievance about completed act of misconduct). To the extent plaintiff also alleges that Lynch
18 failed to train defendants, the facts of the complaint do not demonstrate pervasive failures that
19 would have notified him of a need to further train or supervise his subordinates. See Flores v.
20 County of Los Angeles, 758 F.3d 1154, 1159 (9th Cir. 2014) (pattern of similar violations
21 ordinarily necessary to state a claim for failure to train).

22 V. Leave to Amend

23 The complaint does not state any cognizable claims for relief and plaintiff will be given an
24 opportunity to file an amended complaint. If plaintiff chooses to file a first amended complaint,
25 he must demonstrate how the conditions about which he complains resulted in a deprivation of his
26 constitutional rights. Rizzo v. Goode, 423 U.S. 362, 370-71 (1976). The complaint must also
27 allege in specific terms how each named defendant is involved. Arnold v. Int’l Bus. Machs.
28 Corp., 637 F.2d 1350, 1355 (9th Cir. 1981). There can be no liability under 42 U.S.C. § 1983

1 unless there is some affirmative link or connection between a defendant's actions and the claimed
2 deprivation. Id.; Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, "[v]ague and
3 conclusory allegations of official participation in civil rights violations are not sufficient." Ivey v.
4 Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982) (citations omitted).

5 Plaintiff is also informed that the court cannot refer to a prior pleading in order to make
6 his first amended complaint complete. Local Rule 220 requires that an amended complaint be
7 complete in itself without reference to any prior pleading. This is because, as a general rule, an
8 amended complaint supersedes the original complaint. Loux v. Rhay, 375 F.2d 55, 57 (9th Cir.
9 1967) (citations omitted), overruled in part by Lacey v. Maricopa County, 693 F.3d 896, 928 (9th
10 Cir. 2012) (claims dismissed with prejudice and without leave to amend do not have to be re-pled
11 in subsequent amended complaint to preserve appeal). Once plaintiff files a first amended
12 complaint, the original complaint no longer serves any function in the case. Therefore, in an
13 amended complaint, as in an original complaint, each claim and the involvement of each
14 defendant must be sufficiently alleged.

15 VI. Plain Language Summary of this Order for a Pro Se Litigant

16 Your request to proceed in forma pauperis is granted. That means you do not have to pay
17 the entire filing fee now. You will pay it over time, out of your trust account.

18 Your complaint will not be served because the facts you alleged are not enough to state a
19 claim. You must provide more information showing that defendants Collinsworth, Uribe, Black,
20 Liddell, Arthur, and Sullivan knew you were at serious risk of being assaulted and failed to take
21 reasonable steps to prevent the assault. The fact that you were assaulted, without more
22 information about the circumstances of the assault, is not enough to state a claim for failure to
23 protect. In order to state a claim against defendant Lynch based on his failure to train the other
24 defendants, you must allege facts showing that there was a pattern of similar incidents that would
25 have put him on notice that training was necessary.

26 You may amend your complaint to try to fix these problems. Be sure to provide facts that
27 show exactly what each defendant did to violate your rights or to cause a violation of your rights.
28 If you choose to file a first amended complaint, it must include all claims you want to bring.

1 Once an amended complaint is filed, the court will not look at any information in the original
2 complaint. **Any claims and information not in the first amended complaint will not be**
3 **considered.**

4 In accordance with the above, IT IS HEREBY ORDERED that:

5 1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 2) is GRANTED.

6 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff
7 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.

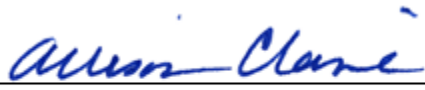
8 § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the
9 Director of the California Department of Corrections and Rehabilitation filed concurrently
10 herewith.

11 3. Plaintiff's complaint fails to state a claim upon which relief may be granted, see 28
12 U.S.C. § 1915A, and will not be served.

13 4. Within thirty days from the date of service of this order, plaintiff may file an amended
14 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil
15 Procedure, and the Local Rules of Practice. The amended complaint must bear the docket
16 number assigned this case and must be labeled "First Amended Complaint." Failure to file an
17 amended complaint in accordance with this order will result in a recommendation that this action
18 be dismissed.

19 5. The Clerk of the Court is directed to send plaintiff a copy of the prisoner complaint
20 form used in this district.

21 DATED: April 29, 2022

22 
23 ALLISON CLAIRE
24 UNITED STATES MAGISTRATE JUDGE
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